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Message Text

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61/45
ACTION EB-11

INFO OCT-01 ARA-16 EUR-25 IO-14 ISO-00 AF-10 EA-11 NEA-14

RSC-01 DRC-01 SSO-00 NSCE-00 INRE-00 FRB-03 OMB-01

TAR-02 SP-03 SWF-02 AGR-20 AID-20 CIAE-00 COME-00

INR-11 LAB-06 NSAE-00 OIC-04 SIL-01 STR-08 TRSE-00

CIEP-03 CEA-02 SS-20 NSC-07 L-03 /220 W
---------- 026998
O R 041641Z SEP 74
FM USMISSION GENEVA
TO AMEMBASSY NEW DELHI IMMEDIATE
SECSTATE WASHDC IMMEDIATE 8042
INFO AMEMBASSY MEXICO
USUN NEW YORK 988
USMISSION OECD PARIS

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DEPT PASS TREASURY FOR BRADFIELD

E O R R E C T E D C O P Y FOR PASSING INSTRUCTIONS

.O. 11652: N/A
TAGS: EGEN UNCTAD
SUBJ: CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES

1. AFTER FOUR DIFFICULT SESSIONS OVER TWO-YEAR PERIOD, UNCTAD WORKING GROUP ENDEAVORING TO DRAFT A CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES HAS REACHED WHAT APPEARS TO BE ITS FINAL CRITICAL STAGE. A CONTACT GROUP OF 13 STATES MEMBERS OF THE WORKING GROUP IS MEETING THIS WEEK IN GENEVA IN WHAT IS SUPPOSED TO BE A SUPREME EFFORT TO ACHIEVE A COMPROMISE ON THE HARD, DISAGREED PROBLEMS OF THE CHARTER, ESPECIALLY NATIONALIZATION OF FOREIGN PROPERTY AND TREATMENT OF MULTINATIONAL CORPORATIONS.

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2. CONTACT GROUP HAS AGREED TO TAKE AS ITS BASIS OF NEGOTIATION THE

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FORMULA ON THESE LATTER QUESTIONS PROPOSED AT LAST SESSION OF
WORKING GROUP IN MEXICO CITY BY AMBASSADOR BRILLANTES OF
THE PHILIPPINES. IT PROPOSES, FOR ARTICLE 2, PARA. 1(D)
OF CHARTER THAT "EACH STATE HAS THE RIGHT TO NATIONALIZE,
APPROPRIATE OR REQUISITION PROPERTY, PROVIDED THAT IN THE CASE
OF FOREIGN PROPERTY JSUT COMPENSATION SHALL BE PAID IN THE LIGHT
OF ALL RELEVANT CIRCUMSTANCES".

3. THE USG, EC, JAPAN, CANADA AND AUSTRALIA AS WELL AS OTHER
DEVELOPED COUNTRIES ARE WILLING TO ACCEPT THIS BRILLANTES FORMULA,
BY WAY OF COMPROMISE. IT IS NOT "PROMPT, ADEQUATE AND EFFECTIVE
COMPENSATION". IT IS NOT EVEN, AS UNGA RESOLUTION 1803
(XXII) PROVIDES, "APPROPRIATE COMPENSATIONIN ACCORDANCE WITH
INTERNATIONAL LAW". BUT IT IS MINIMALLY ACCEPTABLE, AND ACCORDINGLY
WEST IS NOT PRESSING ITS PREFERRED RENDERINGS.

4. EGYPT AND MEXICO, AS WELL AS PHILIPPINES, HAVE ALSO ANNOUNCED
IN CURRENT MEETINGS THAT THEY ARE PREPARED TO ACCEPT THE BRILLANTES
FORMULA.

5. ONLY INDIA AMONG GROUP OF 77 SO FAR HAS ANNOUNCED ITS OPPOSITION.
WHILE OTHER MEMBERS OF GROUP OF 77, AND COMMUNIST COUNTRIES,
CERTAINLY PREFER RENDERING SUCH AS INDIA PURPOSES, THERE SEEMS
TO BE A FAIR CHANCE OF REACHING AGREEMENT ON THE BRILLANTES FORMULA
IF INDAI WOULD CEASE AND DESIST. TODAY, HOWEVER, I.S. CHADA,
INDIAN REPRESENTATIVE TO UNCTAD, REINTRODUCED AND INSISTENTLY
MAINTAINED FORMULA THAT "APPROPRIATE COMPENSATION SHALL BE
PAID IN ACCORDANCE WITH DOMESTIC LAW". RESULT IS THAT WHOLE
PROSPECT OF REACHING AGREEMENT ON A CHARTER IS IMPERILLED,
FOR WEST HAS MADE IT CLEAR THAT IT CAN NO MORE ACCEPT ANY SUCH
EXTREME FORMULATION THAN CAN LDC'S ACCEPT "PROMPT, ADEQUATE
AND EFFECTIVE".

6. MEXICAN (AMBASSADOR CASTANEDA) AND EGYPTIAN (AMBASSADOR
EL ERIAN) REPRESENTATIVES HAVE SAID TO USDEL, AS HAVE
OTHER SOURCES, THAT CHADHA IS THE MOST DIFFICULT BARRIER IN THE
GROUP OF 77 TO ACCEPTING A GENUINE COMPROMISE ON LINES OF
BRILLANTES DRAFT, ON THIS AND SEVERAL OTHER ISSUES. THEY WONDER
WHETHER HIS APPROACH IS PERSONAL RATHER THAN CONSIDERED VIEW OF
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7. ACCORDINGLY USDEL REQUESTS EMBASSY DELHI AND/OR DEPT.,
IF DEPT. AGREES, IMMEDIATELY TO MAKE APPROPRIATE REPRESENTATIONS
TO GOI. FOLLWING ARE AMONG POINTS THAT MIGHT BE MADE, THOUGH
ALL NEED NOT BE:
A. IT IS MOST DESIRABLE THAT UNAMITY BE REACHED ON
CHARTER;
B. INDIAN PROPOSALS, OF WHICH THAT QUOTED IS OUTSTANDING

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EXAMPLE, IF MAINTAINED, WILL ENSURE LACK OF UNAMITY;
C. WHY DOES INDIA OBDURATELY MAINTAIN SO EXTREME
A STAND ON NATIONALIZATION IN UN FORA WHEN ITS OWN RECORD ON
NATIONALIZATION AND PAYMENT OF JUST COMPENSATION IS GOOD AND
WHEN IT SEEKS FOREIGN INVESTMENT?
D. IF MEMBERS OF THE GROUP OF 77 SUCH AS EGYPT, MEXICO
AND THE PHILIPPINES CAN ACCEPT THE BRILLANTES FORMULA, WHY CANNOT
INDIA?
E. DOES INDIA WISH TO ACCEPT RESPONSIBILITY OF SEEMING
TO BE THE WRECKER OF PROSPECTS OF CONSENSUS ON THE CHARTER?
F. THE STAND OF INDIA AS CHADHA EXPOUSES IT, WHICH IS
CLOSELY WATCHED BY INTERNATIONAL CHAMBER OF COMMERCE AND OTHER
BUSINESS REPRESENTATIVES, COULD GIVE THE MISIMPRESSION THAT INDIA
OPPOSES AND WILL MALTREAT FOREIGN INVESTMENT, WITH CONSEQUENT
PREJUDICE TO INDIA'S PROSPECTS FOR ATTRACTING FOREIGN CAPITAL.
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